Sectt. M-27—45,066—19-10-39.

HOME (19 40) Department.

MS SERIES. (17)

G.O. No. 4119

Dated 8---10---1940

[Despatch Abstract.]

PUBLIC PROSECUTOR - South Kanara - Additional Public Prosecutor, Mangalore - Payment of fees for days on which judgments were pronounced and cases adiourned etc.,- District Magistrate's discretion not interfered with - Papers recorded.

24229 7

Ref: No. X. B-75-40.

MANGALORE, 28/8

Dated 25th August, 40.

SECRETARIAT
22 AUG 1940
HOME DEPT

FROM

M. K. Nambyar Esq., LL. M. (Lond.), BARRISTER-AT-LAW,
GOVERNMENT PLEADER AND PUBLIC PROSECUTOR,
MANGALORE.

To

The Secretary to the Government of Madras,
Home Department,
Fort St George, Madras.

SIR,

Law Officers - Mofussil - Fee for work done by the Public Prosecutor of South Kanara for certain days in July- G.O.No.Press 1869 - Home Department dated 1.4.1939 - G.O. No.Ms.6170 - Home Department dated 29.11.1939 - Instructions sought.

1. For work done by me as Public Prosecutor of South Kanara for the month of July 1940 I forwarded my bill in duplicate to the District Magistrate for sanctioning payment. The duplicate bill was returned with the endorsement: "Fees have not been allowed for attending at the time of the pronouncement of judgments on the 16th, 24th and 31st and for the adjournment in C.M.P.23/40 on the 25th as it is work of a formal nature covered by the retaining fee".

2. The amount so disallowed was Rs.40/-,Rs.10/-for each of the four days. The work that occupied me in court, each of these days consisted of two cases one of a formal nature and the other a trial case. I claimed Rs.35/- under para 2 of G.O.Ms.6170 dated 2.11.1940 read with G.O. Press 1869 dated 1.4.1940, which states that "when the Public Prosecutor is engaged in more than one case on a day he should normally be paid Rs.35/-for a day's work". I may invite your attention to the footnote at the end of the duplicate bill as to the time taken for judgments, and may add in explanation of the time given on each day that on account of congestion of work the District

Court has been starting work at 10.30 a.m.

3. The reason for disallowance, it may be noted, is that work of a formal nature is covered by the retaining fee; the only fee sanctioned was Rs.25/for each day for work in connexion with the trial case.

4. I invited the attention of the District Magistrate in my subsequent letter Ref:-B-72-40, dated 14.8.1940 to para 2 of Government of Madras Home Department Memorandum No. 42106 F4 dated 13.2.1940 which states: "The Government desire to make it clear that it is not intended that fees should be disallowed altogether for formal appearances". I also ventured to point out that according to the practice of all his predecessors from the time the new rules came into force - a practice which was left to the District Magistrates to continue under the same Government Memorandum - I had invariably been paid the maximum fee of Rs.35/-a day for such work and in no case was any fee for formal work disallowed as covered by the retaining fee. The District Magistrate however replied to me in this L.Dis.2279-M-40, dated 19th August,1940 that he was unable to reconsider his decision.

5. The aforesaid Government memorandum is quite explicit that fee for formal appearances should not be disallowed. The enclosures to that memorandum copies of which had been kindly sent to me by the same District Magistrate the previous month, particularly the letter of the District Magistrate of Tinnevelley make it quite clear that the question that was raised and settled by the Government was that formal appearances should be paid for. A retainer is what it purports to be, only a retainer, and not a fee for appearances in Court.

6. The question whether the Public Prosecutor's appearance at the time of judgment is necessary was referred by the then District Magistrate of South Kanara in June or July 1939 to the then Sessions Judge and answered in the affirmative. It is not merely a matter of courtsey to the Court, for counsel to attend judgment; it involves quite often any corrections of errors or submissions as to sentences.

7. Nor could it be said that my claim for Rs.35/-the maximum fee for each of these days was unjustified by the rules. Under the old rules the fee was unfettered by any maximum for a day's work. In March 1939 just before the new rules came into force, I remember receiving Rs.105/- for work done on a single day. Now there is no such chance. For all a day's work, whether it involves two, three or four heavy appeals or trial cases, the Public Prosecutor's fee can never exceed Rs.35/-for the whole day. But in introducing the rule of the maximum the Government could not have entertained the idea that it should be operated only when the two or more cases he is engaged on the same day are all heavy, and not when in the accident of a day's work only one happens to be tough and the other light. It is note worthy that in G.O.Nos.Ms.6170 - Home Department dated 29.11.1939, while para 1 made a reference to formal appearances, in individual cases, para 2 made no distinction as between formal and active appearances for the purpose of making up the two or more cases for payment of the present maximum. The Government Memorandum No.42106 F4 Home Department dated 13.2.1940 left this rule untouched, and introduced no alterations.

8. In the last mentioned Memorandum it was also stated that 'it is left to the District Magistrates to continue the practice in their respective districts and to sanction fees at reduced rates within the limit of Rs.15/-for each case, subject to the maximum of Rs.35/-fixed for the day. As far as the practice in this District is concerned I would invite the Government to send for and peruse every one of my bills subsequent to 1st April 1940 in which all the four predecessors of the present District Magistrates who have had to deal with them have sanctioned payment at the rates now claimed by me. It could hardly be the intention of the Government that for the same work and under the same rule

ಪ್ರ 4

a Public Prosecutor's payment should differ with different District Magistrates; or that the reduced scale of fees effected bv the new rules should be subjected to still further reduction in the process of their application. When the Government have made it quite clear that fees should not be disallowed for formal appearances, it is difficult to follow the District Magistrate's reasoning, with due respect, that no fee is payable for such work as the fee is covered by the retaining fee. I am therefore constrained to place these facts before the Government, and to request that necessary instructions may be kindly issued.

PUBLIC PROSECUTOR.

ENCLOSURES.

1. Duplicate copy of the bill of the Public Prosecutor, South Kanara for July,1940 dated 2.8:1940. ಪ್ರ 5-7 ಅಪ್ರ
2. Copy of the letter of the District Magistrate M.L.Dis. 2171/40, dated 10.8.1940 to the Treasury Deputy Collector with endorsement. ಪ್ರ 8 ಅಪ್ರ
3. Office copy of the letter of the Public Prosecutor to the District Magistrate Ref:-B-72-40, dated 14-8-1940. ಪ್ರ 9 ಅಪ್ರ
4. Copy of the letter of the District Magistrate L.Dis.2279-M.40, dated 19.8.1940. ಪ್ರ 10 ಅಪ್ರ

5 — 11

Home Deptt.

Encl. No 242287-1 Dy 2.9.40

Public Prosecutor — South Kanara — fees for hearing judgment and for formal appearance. Petition from Sri. M. K. Nambiar, G.P and P.P. South Kanara Ref No. A.B. 75-40 dt 25.8.40

Referred to the D.M. South Kanara for remarks.

V-G
30.8.40
pesk
30-8

To

The D.M South Kanara

(with ff 1 to 10 cf in orgl to be rtd. with reply)

R after 1 month.

Dated Written Event Sent engor
Date 26/9/40 13

Note:— The G.P and P.P. has sent the copy of this correspondence with the D.M. and it is at 5-10 cf. It however seems that the remarks of the D.M. should only be obtained.

VG
30.8.40
pesk
30.8

C.F. 30.

HOME **DEPARTMENT.**

260147

14/9

Received 11 SEP 1940 *Registered* 19

Subject.

Law Officers - Muffasal - Public Prosecutor - South Kanara fees for hearing judgment and for formal appearance - representation - remarks - submitted.

ENCLOSURES.
No.
Spare copies

L. Dis. No. 2488-M-40.

Station Mangalore, *Dated the* 12th September 1940.

From (Name) M. V. Subrahmanyan, Esq., M.A., I.C.S.,
(Designation) District Magistrate of South Kanara

To The Secretary to the Government of Madras,
HOME Department,
Madras.

Sir,

Government Endorsement No. 24228-F-1, dated 2-9-1940.

****

The rationale of my decision was that appearance for hearing judgment is only an act of courtesy which does not involve work of any kind and that it cannot, therefore, be counted in at all for the calculation of fees independently for that appearance or cumulatively when it is one of the items for a day. I distinguished it from formal appearances like adjournments, which entail preparation and work, and readiness to do the work in Court if the items were called.

2. The practice referred to in paragraph 8 of the Public

B7

Prosecutor's letter refers to reduced rates, the continuance of which was authorised , I do not consider it has any bearing on the present matter. It is a fact, however, that payment - was calculated and made previously in respect of appearances for hearing judgment; and the statement in paragraph 6 is also --- correct; but for the reason given above, I did not consider - that payment for this item was justified.

A
B

p 2 ante

3. The enclosures received with the Government endorsement are resubmitted herewith.

Ex 1-10 ante

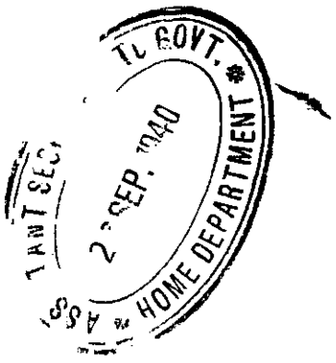
For District Magistrate.

12.9.40

H 8

271597

27/9/1940



Mangalore,

24-9-1940.

To

The Secretary to the Government of Madras,

Home Department,

Fort St. George,

Madras.

From

M.A.Talwar, B.A.,B.L.

Additional Public Prosecutor,

Mangalore.

Sir,

I beg to bring to your kind notice that in respect of the bills submitted by me to the District Magistrate of South Kanara for the work done in the Court of the Assistant Sessions Judge of South Kanara during February, July, and August 1940, respectively, my fee has been disallowed in respect of some items on the ground that the appearances were merely -- formal.

2 The fee allowable to an Additional Public Prosecutor has been set forth in G.O.No.6170 - Home Department dated 29th November 1939 and further in the Memorandum No.42106-F-4-Home Department, dated 13th February 1940, the doubt in regard to the fee allowable for even formal appearances has been set at rest. It has been clearly laid down that fees should not be disallowed even for formal appearances or for appearances involving only a few minutes' work

H 22-23 (Y)

H 9-0 (W)

9/15

in Court.

3 I have herewith appended the duplicate copies of the bills for February, July, and August 1940, and the same will show the particulars items which have been disallowed.

4 In the bill for the month of February, I have been allowed Rs.2-0-0 instead of Rs.12-0-0 for my appearance on 14-2-1940. This was in respect of a bail application which was adjourned. Again for my appearance on 15-2-1940 in two bail applications which were argued, I have been allowed only Rs.16-0-0 instead of Rs.25-0-0. On 16-2-1940 I have been -- allowed only Re.1-0-0 instead of Rs.12-0-0 for my -- appearance on the day the order was pronounced in the bail application.

5 In the bill for the month of July, my fee has been disallowed on 5-7-1940, 13-7-1940 and 24-7-40 when judgments were pronounced in 3 cases respectively and I had to be present in the Court.

6 In the bill for the month of August, my fee has been disallowed on 5-8-1940 and 10-8-1940 when judgments were pronounced in 2 cases respectively. On 5-8-1940 I claimed a fee of Rs.25-0-0 as S.C. -- No.21/1940 was posted for judgment and S.C.No.24/40 was posted for trial. But my fee in S.C.No.21/40 has been disallowed.

7 From the ~~other~~ above facts it will be seen that my fee has been fully disallowed for appearances when judgments were pronounced and further for other formal appearances in respect of bail applications a small fee of Rs.2-0-0 and Re.1-0-0 has been ---

allowed. This cannot be considered as reasonable fee even for formal appearances.

8 I submit that it has always been the --- practice in this District for the Public Prosecutors to be present in Court when judgments were pronounced for obvious reasons and fee for such appearances has always been allowed. Sometimes a Public Prosecutor has to wait in Court before his case is -- taken up and it will be a real hardship if the fee is disallowed on the ground that the appearance is merely formal.

9 When the Public Prosecutor is required to attend the Court even though his appearance may be formal, the time occupied in Court will have to be taken into consideration as he is thereby deprived of his work in other Courts which might bring him even more income.

10 The G.O. cited above and which has been explained in the memorandum dated 13th February 1940, the intention of the Government that fee should not be totally disallowed is quite clear.

11 I, therefore, pray that the fee that has been disallowed in respect of the three bills may be sanctioned and ordered to be paid to me.

For which act of kindness, I shall ever pray.

I beg to remain,

Sir,

Your obedient Servant,

M A Dalwai

11

Home Deptt

Memo No 242287.2 Dt 4.10.40

Public Prosecutor – South Kanara – Payment of fees for hearing judgment and for adjournments. Petition from Mr. M. K. Nambyar, P.P. South Kanara Ref No B. 75/40 Dt 25.8.40.

The Govt. will not interfere with the D.M.'s discretion

4.10.40.

M. K. Nambyar Esq. LL.M (Lond) Bar-at-Law, P. P. South Kanara, Mangalore (with Pp 5 to 10 of vch)

Copy to the D.M. South Kanara w.r.t. his letter L. Dis No 2486/M/40 dt Pp 12-13 of Dt 12.9.40.

P.T.O

Draft II

12

Memo No. 242287.3 DJ 4.10.40

Public Prosecutor - Additional - Mangalore - payment of fees for hearing, judgments, for adjournments etc. Petition from Sri M. A. Talwar Addl. P.P. Mangalore D/ 24.9.40 Pp 14-16 cf

---

The Govt. will not interfere with the DM's discretion.

4/10.10.40.

VDS
30.9.40

To

Sri M. A. Talwar,
Addl. P.P., Mangalore.
(with Pp 17-22 & memo)
Copy to the DM. South Kanara

Dpd. by P... Messenger
...'s ini...
193

Home Department.

Public Prosecutor - South Kanara - payment of fees - for hearing judgments and for adjournments -- petition

---

C.No. 24228 F/40- From Mr. M.K. Nambyar, G.P and P.P. South Kanara Ref. No. [illegible].B. 75 - 40 dated 25. 8. 40. Endt to the D.M. South Kanara No. 24228 F1 dated 2.9.40.

C.No. 26014 F/40. From the D.M. South Kanara L.Dis No. 2488 M 40 dated 12 . 9. 40.

A.S.

Please see the petition from the Public Prosecutor South Kanara at pages 1 - 4 c.f. and the remarks of the D.M. South Kanara at pp 12 - 13 c.f. The points for consideration are noted below:

(1) Whether the P.P. is eligible for fee for hearing judgments on the 16th, 24th and 31st July 1940 when the P.P. attended different courts on each of these days judgments were pronounced in certain cases and certain other cases were also heard as will be seen from the following statement:

Date	Case no.	Place	Time	Work done	Fee claimed	Fee allowed
16. 7. 40	S.C 12/40	Mangalore	½ hour (A)	Judgment delivered	Rs 35/-	Rs 25/-
-do-	S.C 8/40	Karkal	11 a.m. to 5.30 p.m.	Case heard		
24. 7. 40.	S.C 8/40	Karkal	½ hour (A)	Judgment delivered	Rs 35/-	Rs 25/-
-do	S.C 20/40	Puttur	11 a.m. to 5.15 p.m.	Case heard		
31. 7. 40.	S.C 20/40	Puttur	½ hour (A)	Judgment delivered	Rs 35/-	Rs 25/-
-do-	S.C 18/40	Kasargod	11 a.m to 5.15 p.m.	Case heard		

The Sessions Judge, South Kanara has stated that attendance at court at the time of the pronouncement of judgments is necessary. Under rule 11 (1) of the rules relating to the mufassal P.P's read with paragraph (2) of G.O. No. 6170 Home dated 29. 11. 39, the P.P. seems to be entitled to Rs 35 for the whole ~~date~~

14

day's work i.e. Rs 35 for each of these days. The D.M. has allowed only Rs 25/ for each day. and has not allowed fees for hearing judgment. He says that hearing judgment is a matter of courtesy. [redacted] But since the P.P. was present in court, it seems that he is eligible for fees. In view of the fact that under the old rules P.P's were getting fees without any maximum for the whole day (i.e. Rs 35/-) it seems fair to allow fees for the P.P. for attendance in court for hearing judgment. The D.M. also says that it was previously the practice to pay fees for attendance in court to hear judgment.

(2) Whether the P.P is eligible for fees for adjournments. On 25. 7. 40, the P.P. attended courts at Mangalore and Puttur in connection with C.M.P.No. 23/40 and S.C No 20/40 respectively. The D.M. has allowed fees for work in S.C. No. 20/40 but not for C.M.P. 23/40 which was adjourned. The D.M. stated that the work was of a formal nature and was covered by the retaining fee. The D.M. does not seem to be correct, ~~that the work in court is covered by the retainer~~. He himself says that adjournments entail preparation and work, and readiness to do the work in court if the items were called.

Attention is invited to paragraph 2 of Memo. 42106 F.4 dated 13. 2. 40, in which it was made clear that it was not intended that fees should be disallowed altogether for formal appearances. It is left to the D.M. to continue the practice in the district and allow fees up to Rs 15/- for adjournments subject to a maximum of Rs 35/- for the whole day's work. The D.M. was not correct in disallowing fees for adjournment on 25. 7. 40.

Subd. for orders.

V-9
21.9.40.

5

2422BF

3 15

It seems to me that it would be a very bad precedent to allow P.P's to come up to Govt. on revi-sion, over D.M.'s orders on fees for daily work; we have thrashed out some principles for guidance and we ought not to go further into it; as I've said more than once on these files, there must be some discretion, and individual practice varies; it is a pity, I think, that when we had reduced the daily fees, the action of the late Ministry, in going into complaints on minor points led to our laying down principles on minor points that fetters that discretion.

Bm, 8 cf

Getting Rs.790 for the month, the P.P. has done very nicely, and I would tell him that Govt. will not interfere with the D.M.'s discretion.

A

4/27.9.40.

Adv.3.

ff 14-16 cf

C No. 27159 P/40

From Sri. M.A. Talwar, Addl. P.P. Mangalore D/ 24.9.40.

A.S.

ff 1/4 cf

A representation received from Mr. M.A. Talwar Addl. P.P. Mangalore regarding the disallowance of fees by the DM in respect of certain items is at ff 14-16 cf. He may also be informed as at 'A' above.

2 Two draft memos are submitted for approval.

V-G
30.9.40

3/10 4.10.1940.

Please
30/9

~~XX~~ 16.

Issued as Memo No. 24228 F 2 dt 4.10.60 — fl 11 cf

24228 F 3 dt 4.10.60 — fol 12 cf

AK

The papers may be recorded

order No. No. 4119 dt 8/10/60

RCG
4/10
plds
7.+

Abstract-

Public Prosecutor - Sent Form

A.D.D.P.P. - Mangalore -

Payment of fees for hearing

W. judgments, adjournments

- ~~Prosecution for~~ - D.M's

discretion not to be interfered with -

Papers recorded.

2